84-469

Office - Supreme Court, U.S.
FILED
MAY 17 1984
ALEXANDER L. STEVAS,
CLERK

No. _____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

OCTOBER 1984 TERM

STEWART W. WILLIAMS,

PETITIONER,

v.

VIRGINIA NATIONAL BANK,

RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI
TO
THE COURT OF APPEALS OF WASHINGTON

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Arthur G. Barnett,
Attorney for Petitioner

Office and Post Office Address:

1621 Seattle Tower
Seattle, Washington 98101

Telephone: (206) 624-8744

38pp

BEST AVAILABLE COPY

APPENDIX

	Exhibit No.
OPINIONS, ORDERS AND LETTERS	
Letter from Clerk re Order Denying Motion for Reconsideration, Dec. 5, 1983	1
Letter from Clerk and Order Denying Motion To Modify Commissioner's Ruling, Oct. 24, 1983	2
Letter from Clerk and Commissioner's Ruling Dismissing Appeal, Sept. 8, 1983	3
Clerk's letter to parties re appeal requirements, August 17, 1983	4
Notice of Appeal to Court of Appeals, July 18, 1983	5
Order Denying Motion for Reconsideration and Granting Leave To Withdraw, and Transcript of Hearing, June 17, 1983	6
Order on Show Cause (denying motion to vacate), Feb. 5, 1982	7
Affidavit of Mailing Notice of Foreign Judgment, July 27, 1981	8

Certified letter, envelope and Warrant in Debt, May 22-28, 1981 9

JUDGMENT SOUGHT TO BE REVIEWED

State Supreme Court letter denying review, Feb. 17, 1984 10

The Court of Appeals
of the
State of Washington
Seattle
98101

Richard D. Taylor,
Clerk

Division I
One Union Square
600 University St.

December 5, 1983

Mr. Dwight Holloway
Attorney at Law
1621 Seattle Tower
Seattle, WA 98101

Mr. Mark Elgot
Attorney at Law
Suite 2100, Fourth
& Blanchard Bldg.
Seattle, WA 98121

Counsel:

Re: 13499-0-I, Williams v.
Virginia National Bank

On 12/5/83, a panel of judges denied the motion for reconsideration of the order denying the motion to modify a commissioner's ruling in the above-referenced appeal.

Within thirty days after the date of this order, the commissioner's ruling will become final unless, in accordance with RAP 13.4, petitioner

files a petition for review in the Court of Appeals.

In the event a petition for review is filed, respondent may file with the Clerk of the Supreme Court an answer to the petition within fifteen days after the petition is served on him.

For counsel's information, the Supreme Court has determined that no filing fee will be required in that court.

Very truly yours,

/s/Richard D. Taylor
Clerk

RDT/lib

cc: The Hon. Reginald Shriver
Clerk of Supreme Court

Ex 1
(cont.)

The Court of Appeals
of the
State of Washington
Seattle
98101

Richard D. Taylor
Clerk

Division I
One Union Square
600 University St.

October 24, 1983

Mr. Dwight Holloway
Attorney at Law
1621 Seattle Tower
Seattle, WA 98101

Mr. Mark Elgot
Attorney at Law
Suite 2100, Fourth
& Blanchard Bldg.
Seattle, WA 98121

Counsel:

Re: 13499-0-I, Virginia National Bank v. Williams

Enclosed is a copy of the order denying motion to modify commissioner's ruling entered in the above case today.

Within thirty days after the date of this order, the commissioner's ruilng (sic) will become final unless, in accordance with RAP 13.5, petitioner files a motion for discretionary review in the Supreme Court, with a copy filed

in the Court of Appeals.

In the event that a motion for discretionary review is filed, respondent may file with the Clerk of the Supreme Court an answer to the motion within fifteen days after the motion is served on him.

For counsel's information, the Supreme Court has determined that no filing fee will be required in that court.

Very truly yours,

/s/Richard D. Taylor
Clerk

RDT/lib

cc: The Hon. Reginald Shriver
Clerk of Supreme Court

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

NO. 13499-0-I

VIRGINIA NATIONAL BANK,	
Respondent,	ORDER DENYING MOTION TO MODIFY COMMISSIONER'S RULING
v.	
STEWART W. WILLIAMS,	
Appellant.	

Appellant having filed a motion to modify a commissioner's ruling entered on September 8, 1983, and the court having determined that it should be denied; now, therefore, it is hereby

ORDERED that the motion to modify the commissioner's ruling is denied.

Done this 24th day of October, 1983.

/s/ Ringold, J.

/s/ Callow, J. /s/ Durham, J.

Ex 2
(cont.)

The Court of Appeals
of the
State of Washington
Seattle
98101

Richard D. Taylor,
Clerk

Division I
One Union Square
600 University St.
(206) 464-7750

September 8, 1983

Mr. Dwight Holloway
Attorney at Law
1621 Seattle Tower
Seattle, WA 98101

Mr. Mark Elgot
Suite 2100
Fourth & Blanchard Building
Seattle, WA 98121

Counsel:

Re: No. 13499-0-I, Virginia National Bank v. Williams

Enclosed please find a copy of the Commissioner's ruling entered in the above-referenced case today.

In the event counsel wishes to object to the ruling, RAP 17.7 provides for review of a commissioner's ruling. Please note that a "motion to modify the ruling must be served. . . and filed

in the appellate court not later than

10 days after the ruling is filed."

Very truly yours,

/s/ Richard D.
Taylor
Clerk

RDT/mlm
Enclosure

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

VIRGINIA NATIONAL BANK,	)	
Respondent,	)	No. 13499-0-I
v.	)	COMMISSIONER'S
STEWART W. WILLIAMS,	)	RULING
Appellant.	)	DISMISSING
	)	APPEAL

By letter from the clerk of this court dated August 17, 1983, counsel in the above-entitled appeal were advised that the civil appeal statement was due by August 2, 1983, the designation of clerk's papers must be filed with the clerk of the trial court by August 17, 1983, and a motion to dismiss and/or impose sanctions or terms would be heard by a commissioner unless, or (sic) or before September 1, 1983, the statement of arrangements was filed or the court was

notified in writing that counsel does not intend to file a verbatim report of proceedings. The motion was set for September 2, 1983.

A commissioner has considered the motion and reviewed the records and files in this court. There is no indication in the file that any steps have been taken to perfect the record on appeal, and it appears that the appeal has been abandoned. Now, therefore, it is hereby

ORDERED that the above-entitled appeal is dismissed.

Done this 8th day of September, 1983.

/s/Larry A. Jordan
Court Commissioner

Ex 3
(cont.)

COURT OF APPEALS DIVISION I
1 UNION SQUARE
600 UNIVERSITY ST.
SEATTLE, WA. 98101
AUGUST 17, 1983

HOLLOWAY, DWIGHT
1621 SEATTLE TOWER
SEATTLE WA 98101

ELGOT, MARK S
MURPHY AND
MCGOWAN
4th & BLANCHARD
BLDG 2100
SEATTLE, WA 98121

RE: VIRGINIA NATIONAL BANK, RESPONDENT
STEWART W. WILLIAMS, APPELLANT

812110584
KING

DEAR COUNSEL:

A NOTICE OF APPEAL DATED 07/18/83 HAS BEEN RECEIVED AND ASSIGNED #13499-0.

THE TIME PERIODS FOR COMPLIANCE WITH THE RULES OF APPELLATE PROCEDURE ARE AS FOLLOWS:

1. CIVIL APPEALS STATEMENT IS DUE BY 08/02/83 PURSUANT TO RAP 5.5(B).
2. THE ABOVE-REFERENCED APPEAL IS SET FOR SETTLEMENT CONFERENCE ON

09/21/83 AT 09:00 AM. COUNSEL MUST CONTINUE TO PERFECT THE APPEAL OR FILE A MOTION REQUESTING A STAY. (SEE ENCLOSED DIRECTIONS)

3. DESIGNATION OF CLERK'S PAPERS MUST BE FILED WITH THE CLERK OF THE TRIAL COURT BY 08/17/83 PURSUANT TO RAP 9.6.

4. STATEMENT OF ARRANGEMENTS IS DUE BY 09/01/83 PURSUANT TO RAP 9.2(A). IF COUNSEL DOES NOT INTEND TO FILE A VERBATIM REPORT OF PROCEEDINGS, THE COURT MUST BE NOTIFIED IN WRITING BY 09/01/83.
IN THE EVENT THAT THIS ITEM IS NOT ACCOMPLISHED BY THE DUE DATE, A COURT'S MOTION TO DISMISS AND/OR IMPOSE SANCTIONS OR TERMS WILL BE HEARD AT 9:30 A.M. ON THE FRIDAY

FOLLOWING 09/01/83.

5. VERBATIM REPORT OF PROCEEDINGS MUST BE FILED WITH THE CLERK OF THE TRIAL COURT BY 10/17/83 PURSUANT TO RAP 9.5(A).

6. APPELLANT'S BRIEF IS DUE BY 11/30/83 OR IF THE RECORD ON REVIEW DOES NOT INCLUDE A REPORT OF PROCEEDINGS WITHIN FORTY-FIVE DAYS AFTER THE DESIGNATION OF CLERK'S PAPERS AND EXHIBITS IS FILED, PURSUANT TO RAP 10.2(A).

IN THE EVENT THAT THIS ITEM IS NOT ACCOMPLISHED BY THE DUE DATE, A COURT'S MOTION TO DISMISS AND/OR IMPOSE SANCTIONS OR TERMS WILL BE HEARD AT 9:30 A.M. ON THE FRIDAY FOLLOWING 11/30/83.

7. RESPONDENT'S BRIEF IS DUE WITHIN THIRTY DAYS OF RECEIPT OF APPELLANT'S BRIEF PURSUANT TO RAP 10.2(B).

IMPORTANT

COUNSEL'S FAILURE TO TIMELY COMPLY WITH THE RULES OF APPELLATE PROCEDURE WILL RESULT IN THE IMPOSITION OF SANCTIONS PURSUANT TO RAP 18.9. REQUESTS FOR EXTENSIONS OF TIME MUST BE MADE BY MOTION AND AFFIDAVIT SHOWING GOOD CAUSE. COUNSEL ARE CAUTIONED TO REVIEW RAP FOR OTHER APPLICABLE RULES.

VERY TRULY YOURS,

/s/ RICHARD D.
TAYLOR
CLERK

CC: COUNTY CLERK

Ex 4
(cont.)

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

VIRGINIA NATIONAL BANK, Plaintiff, v. STEWART W. WILLIAMS, Defendant.	NO. 81-2-11058-4 NOTICE OF APPEAL TO COURT OF APPEALS

TO: The Clerk of the above-entitled Court:

The above-named defendant hereby seeks review by the Court of Appeals of the State of Washington, Division I, of the Order Denying Motion for Reconsideration and Granting Leave to Withdraw entered by Judge Frank D. Howard On June 17, 1983, and of the Order on Show Cause entered by Judge Howard on February 5, 1982.

DATED this 18th day of July, 1983.

/s/DWIGHT HOLLOWAY,
Attorney for

Defendant-Appellant
1621 Seattle Tower
Seattle, WA 98101
(206) 624-8744

MARK S. ELGOT,
Attorney for
Plaintiff-Respondent

Suite 2100
Fourth & Blanchard
Building
2121 Fourth Avenue
Seattle, WA 98121

(206) 622-5642 or
622-5722

Ex 5
(cont.)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

VIRGINIA NATIONAL BANK, Plaintiff, vs. STEWART W. WILLIAMS, Defendant.	NO. 81-2-11058-4 ORDER DENYING MOTION FOR RECONSIDERATION AND GRANTING LEAVE TO WITHDRAW

THIS MATTER having come on regularly for hearing before the undersigned Judge of the above-entitled court upon the defendant's motion for reconsideration, and the court having entered an order on show cause denying defendant's motion to vacate default judgment and for leave to counterclaim for damages and to quash garnishment on February 5, 1982; the court having found that this court has jurisdiction under RCW 6.36.025 and Civil Rule CR 60 to consider the

defendant's motion to vacate and having found on the record before the court that the Virginia Court had subject matter and personal jurisdiction, and that the procedure employed by the Virginia Court did not offend the requirements of due process, and having considered the motion of plaintiff's counsel for leave to withdraw, and having heard the argument of counsel and reviewed the records and files herein, it is hereby

ORDERED that defendant's motion for reconsideration is hereby denied; and it is further

ORDERED that counsel for plaintiff is granted leave to withdraw.

DONE IN OPEN COURT this 17 day of June, 1983.

/s/Frank D. Howard
Frank D. Howard,
Judge

Ex 6
(cont.)

Presented By:

MURPHY & MCGOWAN

By: /s/
Mark S. Elgot

Notice of Presentation
Waived and Approved
as to form only:

By: /s/
DWICHT HOLLOWAY
Attorney for Defendant

Ex 6
(cont.)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

VIRGINIA NATIONAL BANK, Plaintiff, vs. STEWART W. WILLIAMS, Defendants.	NO. 81-2-11058-4

RENEWED MOTION TO VACATE DEFAULT

BEFORE THE HONORABLE FRANK D. HOWARD
Department 24, Room W-829
King County Courthouse
Seattle, Washington
Friday, June 17, 1983

* * * Barrie F. Regan, Official Court Reporter * * *

Ex 6
(cont.)

Seattle, Washington
Friday, June 17, 1983
9:04 o'clock A.M.

- - - - - - - - - -

THE COURT: It appears to me that I should have considered the original motion as a motion under RCW 6.36.025 to vacate a foreign judgment registered in Washington on the grounds set forth in Civil Rule 60. I propose to consider that I do have jurisdiction on the motion for reconsideration.

On this record, and under the arguments and the venue statute advanced by the plaintiff in support of the judgment, it would appear to me that the Virginia court had both personal and subject matter jurisdiction.

On the record, it appears that the defendant was afforded sufficient due process, in that there was both notice

and an opportunity to defend the action.

I would conclude that there is an insufficient showing to either vacate or deny enforcement of the rendered judgment under the grounds set forth in Civil Rule 60, so I will deny the motion on the registration.

MR. ELGOT: I have an order, your honor, and I'm handing a copy to counsel. This is the original.

MR. HOLLOWAY: I don't think this order comports with the Court's decision, so I would object to the form of this order.

THE COURT: Why don't you indicate to Mr. Elgot what you propose to include in the form. Is there any reason why we shouldn't attempt to get this entered today?

MR. ELGOT: The sooner the better as

far as I'm concerned, your Honor. Perhaps we should discuss it and come back to you.

THE COURT: What I would suggest, why don't you do it while you're both here. Are you still proposing to withdraw at the conclusion of this?

MR. ELGOT: Yes, I am.

THE COURT: Any reason why that shouldn't be considered today, if you wish to do that?

MR. ELGOT: No. I would propose that you do, your Honor.

MR. HOLLOWAY: Well, this Order does provide for -- he's asking for leave to withdraw. I don't think he should be permitted to withdraw until the time for appeal has expired, your Honor.

THE COURT: Why would you propose that counsel wouldn't have a basis for withdrawal? And how would that hamper any appeal?

MR. ELGOT: He's in a better position if he doesn't have --

THE COURT: Let me ask you this. I mean, what basis is there for not allowing counsel to withdraw? Do you happen to have the rule on withdrawal available?

MR. ELGOT: I don't have it handy. I'm quite certain that it does not contain standards --

THE COURT: This doesn't have to be on the record.

(Whereupon, at 9:45 o'clock, A.M., June 17, 1983, the hearing was concluded).

- - - - -

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

VIRGINIA NATIONAL BANK,	)	
Plaintiff,	)	NO. 81-2-11058-4
v.	)	ORDER ON SHOW CAUSE
STEWART W. WILLIAMS,	)	
Defendant.	)	

THIS MATTER having come on regularly for hearing before the undersigned Judge of the above-entitled Court upon the defendant's motion for an order directing the plaintiff to show cause why the default judgment against the defendant should not be vacated, why defendant should not be granted leave to counterclaim for damages against the plaintiff, and why plaintiff's pending writ of garnishment against defendant's employer, Safeway Stores, Inc., should not be quashed and

nullified, and the court having considered defendant's motion memorandum and two affidavits, the affidavit of Mark S. Elgot and Paul Clemmons, and plaintiff's Memorandum and supplemental Memorandum in Resistence to Show Cause, and having heard the argument of counsel, and being fully advised in the premises, now, therefore, it is hereby

ORDERED that defendant's motion to vacate default judgment and for leave to counterclaim for damages and to quash garnishment is hereby denied.

DONE IN OPEN COURT this 5 day of February, 1982.

/s/Frank D. Howard
JUDGE

Presented By:

MURPHY & McGOWAN

By /s/Mark S. Elgot
Mark S. Elgot

Ex 7
(cont.)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

VIRGINIA NATIONAL BANK, Plaintiff

vs.

STEWART W. WILLIAMS, Defendant.

NO. 81-2-11058-4

AFFIDAVIT OF MAILING NOTICE OF FOREIGN JUDGMENT

TO JUDGMENT DEBTOR:

STEWART W. WILLIAMS
1524 Melrose Avenue,
Apt. 2
Seattle, WA 98122

In accordance with R.C.W. 6.36, you are hereby notified that a judgment recovered against you on the 9th day of June, 1981, in the NORFOLK GENERAL DISTRICT COURT, CIVIL DIVISION State of Virginia in and for the County _____, has been duly filed in the above-named court on the 27th day of July, 1981. The name and address of the Judgment Creditor is:

Ex 8

Creditor's local aty is: Mark Elgot of
Murphy & McGowan
Suite 2100 Fourth
& Blanchard Bldg
2121 Fourth Ave.
Seattle, WA 98121

The undersigned certifies that a copy of the foregoing notice was mailed to the above named judgment debtor at the address given on this 7/27/81 by first class mail.

KENNETH S. HELM

Superior Court Clerk

By /s/
Deputy Connie Cook

DJ/AJE/yw

Rev: 3/81

Ex 8
(cont.)

CERTIFIED MAIL

COMMONWEALTH of VIRGINIA
Secretary of the Commonwealth

May 26, 1981

Stewart W. Williams
1524 Melrose Ave., Apt. #2
Seattle, WA 98122

Dear Mr. Williams:

You are being served with the enclosed notice under Section 8.01-329 of the Code of Virginia which designates the Secretary of the Commonwealth as statutory agent.

If you have any questions about this matter, please address them to the Clerk of the Court in which you are to appear or consult an attorney of your choice.

Sincerely,

/s/ Frederick T. Gray, Jr.
Secretary of the Commonwealth

am
Enclosure

Ex 9

SECRETARY OF THE COMMONWEALTH
Post Office Box 1-B
Richmond, Virginia 23201

CLAIM CHECK NO
532141

☐ HOLD

DATE

1ST NOTICE

2ND NOTICE

RETURN

Detached from PS Form 3849—A Oct. 1980

CERTIFIED
No. 582613
MAIL

Ex 9
(cont.)

BEST AVAILABLE COPY

RETURN DATE FILE NO.
June 9, 1981

Virginia National Bank
Plaintiff(s)
One Commercial Place
Norfolk, Virginia

v.

Stewart W. Williams
Defendant(s)
1524 Melrose Ave. Apt. 2
Seattle, Washington 98122
Serve: Secretary of the Commonwealth
Richmond, Va.

WARRANT IN DEBT VA CODE ANN § 16.1-79

NORFOLK GENERAL DISTRICT COURT Room 166

811 E. CITY HALL AVE., NORFOLK, VA.

23510 (804) 441-2368

TO ANY AUTHORIZED OFFICER:

You are hereby commanded to summon the Defendant(s) to appear on June 9, 1981 11 A.M. before this Court to answer the complaint of the Plaintiff(s) upon a claim of nonpayment of a debt in the sum of $3014.45, and $12.00 costs, and

Ex 9
(cont.)

interest as follows:

_____

said to be due on the basis of the following:

__Open Account __Contract X Note

__Other (Explain)

Any reasonable attorneys fees incurred

Homestead Exemption waived X yes __no

__cannot be demanded

May 22, 1981 /s/ Vivian C. Hampton

__Clerk XMagistrate

WARNING TO DEFENDANT: if you fail to appear in court, judgment may be entered against you.

Ex 9
(cont.)

Long Arm 8.01-329

MAGISTRATES' OFFICE

Please issue Warrant In Debt X

Warrant In Detinue ___

PLAINTIFF: Virginia National Bank,
Credit Recovery Department
Royster Bldg., 3rd Floor,
Room 316, P.O. Box 600
Norfolk, VA 23501

VS

DEFENDANT(S):
X STEWART W. WILLIAMS
1524 MELROSE AVE APT. #2
SEATTLE WASHINGTON 98122

Security Agreement ___

Open Account ___

Homestead Waiving Promissory Note X

Total Amount Due: $3014.45

With Interest From JUN 9 1981

Return Date: JUN 9 1981
Time: 11:00

in the Norfolk General District Court,

Civil Division, 811 E. City Hall Ave.,
Room 166.

Ex 9
(cont.)

x The defendant marked with an X is a non-resident

___ After exercising due diligence the undersigned has been unable to locate the defendant marked with an X

x The last known post office address of such defendant is as shown

(SIGNED) /s/ Paul Clemmons

(TITLE) CREDIT RECOVERY SPECIALIST

(DATE) May 13, 1981

Subscribed and sworn to before me
this date May 14, 1981
at Norfolk Virginia

My term of office expires: Feb 24, 1984

/s/Robert F. Pease Jr.
Notary Public

Ex 9
(cont.)

The Supreme Court

State of Washington

Olympia
98504

Reginald N. Shriver
Clerk

753-5080
Area 206

February 17, 1984

Mr. Dwight Holloway
Attorney at Law
1621 Seattle Tower
Seattle, Washington 98101

Mr. Mark Elgot
Attorney at Law
Suite 2100, Fourth and
Blanchard Building
Seattle, Washington 98121

Re: Supreme Court No. 50210-2- Virginia National Bank v. Stewart W. Williams

Court of Appeals No. 13499-0-I

Counsel:

The above entitled petition for review was considered by the Court on its February 17, 1984, petition for review calendar.

The petition was denied by order number 121/41 filed on February 17, 1984.

Ex 10

Very truly yours,

/s/ Reginald N.
Shriver
REGINALD N. SHRIVER
Clerk

RNS:tt

Ex 10
(cont.)